

Md. STATE FINANCE AND PROCUREMENT Code Ann.

§ 15-216

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Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.

- Annotated Code of Maryland
- STATE FINANCE AND PROCUREMENT
- DIVISION II. GENERAL PROCUREMENT LAW
- TITLE 15. PROCUREMENT CONTRACT ADMINISTRATION AND DISPUTE RESOLUTION
- SUBTITLE 2. DISPUTE RESOLUTION
- PART III. PROCEDURES FOR DISPUTE RESOLUTION

§ 15-216. Application of Administrative Procedure Act

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- (a) **Disposition before filing appeal with Appeals Board.** -- Title 10, Subtitle 2 of the State Government Article does not apply to the disposition of a protest or a contract claim by:
 - (1) a primary procurement unit;
 - (2) a procurement officer; or
 - (3) a unit.
 - (b) **Proceedings of Appeals Board.** -- The Appeals Board shall conduct its proceedings in accordance with Title 10, Subtitle 2 of the State Government Article.

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§ 15-217. Initiation of protest or contract claim

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- (a) **In general.** --
 - (1) A prospective bidder or offeror, a bidder, or an offeror may submit a protest to the procurement officer.
 - (2) A unit or a person who has been awarded a procurement contract may submit a contract claim to the procurement officer.
 - (b) **Time for submission.** -- Except as provided in § 15-219 of this subtitle, a protest or contract claim shall be submitted within the time required under regulations adopted by the primary procurement unit responsible for the procurement.

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§ 15-218. Procedure by unit

- **(a) In general.** -- Except as provided under § 15-219 of this subtitle, a procurement officer who receives a protest or a contract claim from a contractor shall comply with this section.
- **(b) Review by procurement officer.** --
 - (1) On receipt of a protest or contract claim from a contractor, a procurement officer:
 - (i) shall review the substance of the protest or contract claim;
 - (ii) may request additional information or substantiation through an appropriate procedure;
 - (iii) may discuss with interested parties and, if appropriate, may conduct negotiations with the person initiating the protest or contract claim; and
 - (iv) shall comply with any applicable regulations.
 - (2) Unless clearly inappropriate, the procurement officer shall seek the advice of the Office of the Attorney General.
- **(c) Review by procurement officer -- Decision.** --
 - (1) Subject to subsection (b) of this section and consistent with the State budget and other applicable laws, the procurement officer shall:
 - (i) resolve the protest or contract claim by agreement of the parties;
 - (ii) wholly or partly deny the protest or contract claim; or
 - (iii) wholly or partly grant the relief sought by the person who submitted the protest or contract claim.
 - (2) The procurement officer promptly shall send the decision in writing to the reviewing authority.
- **(d) Review of procurement officer's decision.** -- Unless otherwise provided by regulation, the decision of the procurement officer shall be reviewed promptly by:
 - (1) the head of the unit; and
 - (2) the head of the principal department or other equivalent unit of which the unit is a part.
- **(e) Action of reviewing authority.** --
 - (1) Except as provided under paragraph (3) of this subsection, the reviewing authority shall approve, disapprove, or modify the decision of the procurement officer within 180 days after receiving the contract claim or a longer period to which the parties agree.
 - (2) The action of the reviewing authority under this subsection shall be the final action of the unit.
 - (3) The reviewing authority may remand the proceeding with instructions to the procurement officer.
 - (4) On remand, the procurement officer shall proceed under subsection (b) of this section in accordance with those instructions.
- **(f) Decision not to pay is final; failure to reach decision deemed decision not to pay.** --
 - (1) A decision not to pay a contract claim is a final action for the purpose of appeal to the Appeals Board.
 - (2) The failure to reach a decision within the time required under subsection (e) of this section may be deemed, at the option of the contractor, to be a decision not to pay the contract claim.

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§ 15-219. Procedure by unit -- Contract claims for construction contracts

- **(a) Notice of claim must be filed within 30 days.** -- Except to the extent a shorter period is prescribed by regulation governing differing site conditions, a contractor shall file a written notice of a claim relating to a procurement contract for construction within 30 days after the basis for the claim is known or should have been known.
- **(b) Explanation of claim.** -- Unless extended by the unit, within 90 days after submitting a notice of a contract claim under a procurement contract for construction, a contractor shall submit to the unit a written explanation that states:
 - (1) the amount of the contract claim;
 - (2) the facts on which the contract claim is based; and
 - (3) all relevant data and correspondence that may substantiate the contract claim.
- **(c) Review of claim.** --
 - (1) Subject to paragraph (2) of this subsection, the head of the unit engaged in procurement of the construction shall review the contract claim.
 - (2) If the unit is part of a principal department or other equivalent unit, the Secretary of the principal department or the equivalent official shall review the contract claim, unless review has been delegated by regulation to the head of the unit.
- **(d) Investigation of claim; notice of decision.** -- The person who reviews a contract claim under subsection (c) of this section shall:
 - (1) investigate the contract claim; and
 - (2) give the contractor written notice of a resolution of the contract claim:
 - (i) within 90 days after receiving the contract claim or a longer period to which the parties agree, if the amount of the contract claim is not more than the amount under which the accelerated procedure may be selected before the Appeals Board; or
 - (ii) for any other contract claim, within 180 days after receiving the contract claim or a longer period to which the parties agree.
- **(e) Time period to which recovery is limited.** -- Recovery under a contract claim is not allowed for any expense incurred:
 - (1) more than 30 days before the required submission of a notice of a claim under subsection (a) of this section; or
 - (2) unless the time for submission of a claim is extended under subsection (b) of this section, more than 120 days before the required submission of the claim.
- **(f) Payment of undisputed portion of claim.** --
 - (1) If the unit determines that it is responsible for a portion but not all of the amount claimed by the contractor, subject to the terms of the contract, the unit shall pay the undisputed amount.
 - (2) Payment of the undisputed amount:
 - (i) is not an admission of the liability of the unit on the claims; and
 - (ii) does not preclude recovery of the amount paid if it subsequently is determined that the determination of the unit was not correct.
- **(g) Decision not to pay claim.** --
 - (1) A decision not to pay a contract claim is a final action for the purpose of appeal to the Appeals Board.

- (2) The failure to reach a decision within the time required under subsection (c) of this section may be deemed, at the option of the contractor, to be a decision not to pay the contract claim.
- (h) **Final payment.** -- At the time of final payment, the unit shall:
 - (1) release the retainage due to the contractor; and
 - (2) pay any interest that:
 - (i) has accrued on the retainage from the time of payment of the semifinal estimate; and
 - (ii) is due and payable to the contractor.

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- TITLE 15. PROCUREMENT CONTRACT ADMINISTRATION AND DISPUTE RESOLUTION
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§ 15-219.1. Contract claim against a contractor

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- (a) **Written notice; contents; procedure upon receipt of claims.** --
 - (1) A unit may assert a contract claim against a contractor by sending written notice to the contractor and the procurement officer that states:
 - (i) the basis for the contract claim;
 - (ii) to the extent known, the amount, or the performance or other action, requested by the unit in the contract claim; and
 - (iii) the date by which the contractor is required to provide a written response to the contract claim.
 - (2) On receipt of a contract claim from a unit, a procurement officer:
 - (i) shall review the substance of the contract claim;
 - (ii) may request additional information or substantiation through an appropriate procedure; and
 - (iii) may discuss or, if appropriate, negotiate the contract claim with the unit or contractor.
 - (3) The procurement officer shall proceed under subsection (b) of this section if the contractor fails to respond, provides an inadequate response, or denies the contract claim or the relief sought by the unit in whole or in part.
 - (b) **Proposed decision upon claim when no resolution is reached.** --
 - (1) If the contractor and the unit do not resolve the contract claim, the procurement officer shall prepare a proposed decision on the contract claim, including:
 - (i) a description of the contract claim;
 - (ii) references to pertinent contract provisions;
 - (iii) a statement of factual areas of agreement or disagreement; and
 - (iv) a statement in the proposed decision wholly or partly granting or denying the relief sought, with supporting rationale.
 - (2) Unless otherwise provided by regulation, the procurement officer shall submit the contract claim and proposed decision to:
 - (i) the head of the unit; and
 - (ii) the head of the principal department or other equivalent unit of which the unit is a part.
 - (3)
 - (i) The reviewing authority shall approve, modify, or disapprove the proposed decision.

- (ii) In disapproving a proposed decision, the reviewing authority may remand the contract claim with instructions to the procurement officer.
- (iii) On remand, the procurement officer shall proceed as required under this subsection and in accordance with the instructions of the reviewing authority.
- (4) The decision of the reviewing authority is the final action of the unit.

Md. STATE FINANCE AND PROCUREMENT Code Ann. § 15-220

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§ 15-220. Appeal from unit's decision -- In general

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- (a) **Appeal of final action.** -- Except for a contract claim related to a lease for real property, a bidder or offeror, a prospective bidder or offeror, a unit, or a contractor may appeal the final action of a unit to the Appeals Board.
 - (b) **Time for filing.** -- An appeal under this section shall be filed:
 - (1) for a protest, within 10 days after receipt of the notice of a final action; and
 - (2) for a contract claim, within 30 days after receipt of the notice of a final action.

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§ 15-221. Appeal from unit's decision -- Procedures

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- (a) **Priority of protests.** -- If a person appeals the decision of a unit about a protest, the Appeals Board shall:
 - (1) give that case priority over other matters not involving protests before the Appeals Board; and

- (2) decide it expeditiously.
- (b) **Briefs.** --
 - (1) For any appeal, the Appeals Board may require each party to file a brief.
 - (2) If briefs are required, the Appeals Board shall establish the order and time limits for filing briefs after consultation with both parties.
- (c) **Discovery -- In general.** -- Except as provided in subsection (d) of this section, in a case before the Appeals Board, a party may obtain discovery about any matter that:
 - (1) is not privileged; and
 - (2) is relevant to the subject matter involved in that case.
- (d) **Discovery -- Protests.** -- In an appeal from a decision about a protest, discovery shall be limited to requests for the production of documents unless the Appeals Board determines that extraordinary circumstances require additional limited discovery to avoid substantial unfairness or prejudice.
- (e) **Final decisions -- Contract claims.** -- In an appeal from a decision about a contract claim, unless both parties agree to a longer period, the Appeals Board shall issue its final decision within 180 days after the day on which:
 - (1) all briefs have been filed; or
 - (2) if later, the record has been closed.

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§ 15-221.1. Appeal from unit's decision -- Costs incurred by bidder or offeror

- (a) **Award of reasonable costs.** -- The Board of Contract Appeals may award a prospective bidder or offeror, a bidder, or an offeror the reasonable costs of filing and pursuing a protest, not including attorney's fees, if:
 - (1) the prospective bidder or offeror, bidder, or offeror appeals the final action of an agency on a protest;
 - (2) the Board of Contract Appeals sustains the appeal; and
 - (3) the Board of Contract Appeals finds that there has been a violation of law or regulation.
- (b) **Regulations.** -- The Board of Contract Appeals shall adopt regulations to implement this section and to determine what constitutes reasonable costs of filing and pursuing a protest.

Md. COMMERCIAL LAW Code Ann. § 12-511

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- Annotated Code of Maryland
- COMMERCIAL LAW
- TITLE 12. CREDIT REGULATIONS
- SUBTITLE 5. RETAIL CREDIT ACCOUNTS

§ 12-511. Billing statement inquiry

- (a) **"Billing error" defined.** -- In this section, "billing error" means the initial occurrence of an error in a billing statement given to a buyer by the holder of an account, which error results from:
 - (1) An omission or commission by the holder in posting any debit or credit;
 - (2) The computation of any amount; or
 - (3) Any similar error of an accounting nature.
- (b) **Exception.** -- The provisions of this section do not apply to a status inquiry made under § 12-510 of this subtitle if a billing error is not asserted by the buyer.
- (c) **Buyer's inquiry.** -- If, on receipt of a billing statement from a holder, a buyer believes the billing is in error, he may inquire as to the computation of the statement. The inquiry by the buyer shall:
 - (1) Be made within 60 days of receipt of the billing statement which contains the claimed error;
 - (2) Be in writing and sent to the holder by mail at the address designated on the statement pursuant to § 12-503(i) of this subtitle; and
 - (3) Set forth sufficient information to enable the holder to identify:
 - (i) The buyer and the account;
 - (ii) The amount and transaction shown in the billing statement which the buyer in good faith believes to be a billing error; and
 - (iii) The facts providing the basis for the buyer's belief that the billing statement is in error.
- (d) **Holder's duties.** -- On receipt of an inquiry under this section, the holder shall:
 - (1) Within 30 days after its receipt, mail a written acknowledgement to the buyer; and
 - (2) Within 60 days after its receipt, before taking any action to collect the amount believed by the buyer to be a billing error:
 - (i) Make appropriate corrections in the account and mail to the buyer a written notice which states that the amount believed to be in error has been corrected and will be so shown on the next billing statement mailed to him; or
 - (ii) Send to the buyer a written notice which sets forth in a clear and definitive manner the reasons why the holder believes that the account was correctly shown in the statement.
- (e) **Holder may continue collection.** -- Notwithstanding the receipt of an inquiry, the holder may:
 - (1) Transmit to the buyer regular periodic billing statements which include the amount believed by the buyer to be a billing error; and
 - (2) Undertake collection of any amount which the buyer does not dispute under this section.
- (f) **Holder to describe procedure.** -- On or before the first billing statement for a new account, the holder shall send to the buyer a written notice which describes the procedures to be followed by a buyer under this section to claim a billing error.
- (g) **Prohibited communications.** -- On receipt of an inquiry under this section, until the holder has complied with the provisions of this section, he may not communicate to any person, including any credit bureau or credit reporting agency, unfavorable credit information concerning the buyer and based on the buyer's failure to pay the amount believed by him to be a billing error.
- (h) **Civil penalties.** -- If a holder of an account receives a written inquiry from a buyer under this section and fails to comply with the requirements of this section, then:
 - (1) If the disputed amount is not a billing error, the holder:
 - (i) May proceed to collect the disputed amount; and
 - (ii) Shall forfeit the right to collect any finance charge assessed on the account in connection with the disputed amount from the date of the mailing of the written inquiry to the date the holder complies with this section; or

- (2) If the disputed amount is a billing error, the holder:
 - (i) May not collect the amount of the error or any finance charge on that amount; and
 - (ii) Is liable to the buyer for his actual damages sustained as a result of the failure of the holder to comply with this section.